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STATE CAPITOL
PHOENIX, ARIZONA

July 24, 1974

DEPARTMENT OF LAW LETTER OPINION NO. 74-17-L (R-29)

REQUESTED BY: THE HONORABLE GARY R. POPE
Mohave County Attorney

QUESTION: In a bankruptcy proceeding under Chapter X,
can a United States District Court enjoin a
County Treasurer from collecting property
taxes from the bankrupt?

ANSWER: Yes.

Under § 148 of the Bankruptcy Act, 11 U.S.C. 548, a judge can stay any proceeding to enforce a lien against the debtor's property. The language of the provision and the decision in United States v. A Certain Parcel of Land Known as Hotel Buckminster in Boston, 59 F.Supp. 65 (D.C. Mass. 1944), seem to indicate that this provision is applicable to actions to enforce collection of real property taxes. Accordingly, we advise you to comply with the order of the court.

Under the provisions of 11 U.S.C. 671 and 28 U.S.C. 960, the debtor or the corporation organized under the plan is liable for taxes accruing during the bankruptcy proceeding. Such taxes are an expense of administration. Penalties and interest chargeable to the estate as a result of failure to pay such taxes could result in a surcharge against the Trustee for negligence. In order for the Trustee to be protected in the event the assets of the estate are insufficient to cover the expenses of administration, the Trustee should obtain a court order prior to payment of the taxes.

Proof of claim should be filed in respect to taxes becoming due prior to the filing of the reorganization petition in the bankruptcy proceeding.

Respectfully submitted,



N. WARNER LEE
The Attorney General

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